

Supreme Court of the United States

OCTOBER TERM, 1940

IN THE MATTER

of

DEEP ROCK OIL CORPORATION, a corporation,
Debtor.

No.

STANDARD GAS AND ELECTRIC COMPANY,
a corporation,
Petitioner,

v.

DEEP ROCK OIL CORPORATION, Debtor, HENRY N. GREIS, Trustee, JOHN J. SHINNERS, NEWTON P. FRYE, ROBERT F. HOLDEN, JOHN H. MASON, ALBERT J. ROBERTSON, and CHARLES S. SARGENT, as a Reorganization Committee, JOHN M. TAYLOR, OSCAR A. KENNEDY, and H. RUSSELL HASTINGS, as Independent Preferred Stockholders Committee.

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BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion in the Circuit Court of Appeals is not yet reported in the official reports. A copy of the opinion appears in the record at pages 1686, *seq.*

JURISDICTION

The decrees of the Circuit Court of Appeals were entered on January 13, 1941 (R. 1695). The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 (a) of the Judicial Code, as amended (28 U. S. C. A. Section 347).

QUESTIONS PRESENTED

1. Since the Debtor has not been found to be insolvent, and since provision has been made for the full satisfaction of the prior rights of creditors, leaving only the participation of stockholders to be considered, may a plan of reorganization under the Bankruptcy Act, as amended, entirely exclude from participation a subordinated creditor and the common stockholders without their consent?

2. As a cognate question: Does the rule of absolute priorities apply to the adjustment of the rights of preferred stockholders, a subordinated creditor (Standard) and the common stockholders, where the Debtor is solvent and the provision has been made for the full satisfaction of the prior rights of the creditors?

3. Since the plan of reorganization excludes Standard, as a creditor, from participation, was it properly approved as fair and equitable, taking into consideration:

   a. Standard's amended claim for $6,129,248.36 of which $1,000,000 is for moneys paid directly to the holders of notes on account of interest,

$597,129.75 represents moneys paid directly to the holders of preferred stock on account of dividends and $1,300,428.98 represents moneys provided to the Debtor for the purpose of enabling it to pay essential operating and corporate expenses (all between February 24, 1928 and February 28, 1933).

b. The transfer by Standard, as directed by the District Court, of the stock and note of the Refining Company, the Bradstreet Properties and the Cracking Plant, representing a net cash investment of Standard of $2,082,026.30 from which Deep Rock and its security holders benefitted.

c. That since the beginning of the receivership of Deep Rock in 1933 "speculators" have acquired notes of the Debtor at prices as low as 20% of the principal amount thereof "flat" (*i.e.,* inclusive of accrued interest since March 1, 1933) and preferred stock at prices as low as (and less than) $5 per share, and that the plan of reorganization recognizes a priority in favor of such "speculators" over Standard to the extent of principal of the notes plus interest since March 1, 1933 at the rate of 6% per annum and the par value in liquidation of the preferred stock with dividends thereon at the rate of $7 per share per annum since 1931.

d. The evidence received by the District Court in February 1940 (R. 1264-1271, 1275-1276, and 1297-1307) after the decision by this Court in the *Taylor* case.

THE STATUTES INVOLVED

The statutes involved are Sections 179, 216 (7), 216 (8), and 221 of Chapter X of the Bankruptcy Act, as amended (11 U. S. C. A. Sections 579, 616 and 621).[1]

The pertinent portion of Section 179 provides as follows:

> "Sec. 179. After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 203 of this Act, or for whom payment or protection has been provided as prescribed in paragraph (7) and (8) of section 216 of this Act, the judge shall fix a hearing, * * *"

The pertinent portions of the other sections of the Bankruptcy Act are contained in Exhibit A attached to this brief.

STATEMENT OF THE CASE

The essential facts of the instant case have been stated in the foregoing petition to which reference is respectfully made.

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[1]The District Court, acting under Section 276(c)(2) of Chapter X, found it practicable to apply these sections to this proceeding (R. 1576).

SPECIFICATIONS OF ERROR

1. The Circuit Court of Appeals erred in finding that the Second Amended Plan of Reorganization is fair and equitable, in the face of the facts that the Debtor is solvent, that provision has been made for the full satisfaction of the prior rights of creditors, leaving only the participation of stockholders to be considered, and that Standard was denied participation as a creditor and as a common stockholder.

2. The Circuit Court of Appeals erred in holding that the rule of absolute priorities applies in the adjustment of the rights of the several classes of stockholders, notwithstanding the fact that provision has been made for the full satisfaction of the prior rights of creditors and that the Debtor is solvent.

3. The Circuit Court of Appeals erred in holding that the reorganization court is not required, in determining whether a plan is fair and equitable, to take into consideration the actual prices paid for notes and preferred stock by persons who acquired such securities during the pendency of the reorganization proceedings at great discounts from their face value, notwithstanding the particular facts of this case.

4. The Circuit Court of Appeals erred in holding that it was not practicable to require the holders of securities to file statements showing the prices paid therefor, in the face of the fact that such statements had in fact been filed by the holders of more than 70% of the outstanding notes and by the holders of 62.75% of the outstanding preferred stock.

5. The Circuit Court of Appeals erred in not taking into consideration, on the issue of the fairness of a plan excluding Standard from participation, the testimony received by the District Court early in 1940 (after the decision of the *Taylor* case) relating to Standard's amended claim and relating to Standard's dealings with the Debtor prior to March 1, 1933.

6. The Circuit Court of Appeals erred in holding that as a matter of law the Second Amended Plan of Reorganization was accepted by or on behalf of two-thirds in amount of creditors and stockholders holding a majority of the stock affected by the Plan, notwithstanding the fact that Standard as a creditor in a separate class and the holders of a majority of the common stock of the Debtor did not accept the Plan and notwithstanding the fact that the Debtor is solvent.

SUMMARY OF ARGUMENT

For the sake of brevity, reference is respectfully made to the "Reasons for Granting Certiorari" contained in the foregoing petition.

ARGUMENT

POINT I

WHERE A DEBTOR IS NOT INSOLVENT, AND HERE PROVISION HAS BEEN MADE FOR THE FULL ATISFACTION OF THE PRIOR RIGHTS OF CREDI-ORS, LEAVING ONLY THE PARTICIPATION OF TOCKHOLDERS TO BE CONSIDERED, A PLAN OF EORGANIZATION MAY NOT BE CONFIRMED WITH-UT THE CONSENT OF EXCLUDED CREDITORS AND TOCKHOLDERS, UNLESS PAYMENT OR PROTECTION PROVIDED FOR SUCH EXCLUDED CREDITORS AND TOCKHOLDERS IN A MANNER PRESCRIBED IN SEC-ON 216(7) AND (8) OF THE BANKRUPTCY ACT, AS MENDED.[1]

We respectfully submit that this question was not in-lved in *Case* v. *Los Angeles Lumber Products Co. Ltd.*, 8 U. S. 106, 60 S. Ct. 1, 84 L. Ed. 110 (1939), where, as *In re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 81 Ed. 16, 57 S. Ct. 88 (1936), the Debtor was insolvent. those cases there was a finding of insolvency and the ue involved was the right of a stockholder or junior editor to participate in the assets of the Debtor before the ior creditor had received satisfaction in full. A similar uation prevailed in *In re Consolidated Rock Products* ., U. S. (October Term, 1940, Nos. 400 and

[1]Granted the subordination of Standard, there is no question this case about the fact that the Debtor's assets ($17,640,415) ceed the Debtor's liabilities ($14,350,000). (Opinion of the rcuit Court of Appeals (R. 1689.) There are ample assets ilable to discharge fully the prior rights of creditors.

444), where this Court stated that the rule of absolute priorities applies to solvent as well as insolvent companies. We understand that statement, in the light of the facts of that case, to hold that stockholders may not participate until the full prior rights of creditors have been satisfied. In this case, however, the prior rights of creditors have been fully satisfied and what remains to be done is to adjust the rights of stockholders (and Standard, the subordinated creditor) among themselves. Whether the rule of absolute priorities applies to the circumstances has not been decided by this Court. We urge that on principle, as a matter of law, and in equity because of the particular facts of this case, a different rule should here prevail.

It is of the essence of the contract between the creditor and the corporation and between the stockholder and the corporation that the creditors must be paid in full before the stockholder may share in the assets. Similar is the relationship between the senior creditor and the junior creditor. That contract is the basis of the doctrine of the *Consolidated Rock Products* case and its predecessors. Far different, however, is the contract between the preferred stockholder and the common stockholder. In this case, that contract is expressed on the certificate of preferred stock which is a part of the record (R. 1346 B). It entitles the preferred stock to a priority in the division of earnings and to a priority in the distribution of assets only in liquidation. It does not provide for the exclusion of the common stockholder when at any given moment the value of the assets is such that upon a liquidation at that moment, satisfaction of the rights of the preferred stock would leave no remaining value for the common stockholder.

The preferred stockholders of this corporation have no rights of foreclosure under the corporate charter, nor the right under the corporate charter to demand a liquidation at any time; nor have they the right to call for a termination of the corporate venture. We submit that the terms of the charter are a contract between the preferred stockholders and the common stockholders and that where there is any equity for stockholders of any class, no class of stockholder may be frozen out of a reorganization by the logical fallacy of assuming that that class is "not affected" and, therefore, need not be consulted.

> *Louisville Jt. Stock L. B.* v. *Radford,* 295 U. S. 555, 55 S. Ct. 854, 79 L. Ed. 1593 (1935).

To exclude the junior interests without their consent (in the case of a solvent debtor where provision has been made for the satisfaction in full of the rights of prior creditors) would be to confer upon the preferred stockholders rights which were never conferred upon them by the charter or contract and to take away from Standard its contractual rights. We submit that Congress has no power to require such a result in the case of a solvent Debtor, and that Congress, in enacting the Bankruptcy Act, expressly sought to avoid any unconstitutional exercise of its bankruptcy power by expressly requiring consents in the case of solvent corporations.[1]

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[1]In *In re Utilities Power and Light Corporation* (C. C. A. 7th, March 9, 1940) the Circuit Court of Appeals for the Seventh Circuit dismissed on motion an appeal from an order of confirmation. One of the points raised by the appellant, a commit-

Jurisdiction over "bankruptcies" does not include jurisdiction to alter the contract of stockholders of a solvent company without their consent.

The argument may be advanced that the result would be the same even if the procedures of Section 216 (7) and (8) were observed. But this is speculation and may well not be so. No short cut method ought to be substituted by a District Court for the statutory procedure provided by Congress; such judicial legislation would evade the Congressional intent, would destroy the standards of orderly judicial procedure, as prescribed by the legislature, and would substitute an erratic and unpredictable system for the orderly and uniform system of Bankruptcy Laws enacted by Congress. It is impossible here to separate substance from form, and evasion of the forms has resulted in a destruction of substantive values.

Neither Standard as a creditor, nor the common stockholders as a class, accepted (nor was there afforded them an opportunity to accept) the plan of reorganization, presumably on the theory that they were "not affected by the plan".

Granting that under the decision of this Court in the *Taylor* case and of the Circuit Court of Appeals in the

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tee of junior interests which had been excluded from the reorganization, is the point discussed in the text of this brief. The motion to dismiss the appeal was based on five grounds, four of which would have no relevance at all to this case. Since the Circuit Court did not indicate the reason for dismissal, that decision casts no light on the question discussed in the text. And *cf. Campbell* v. *Alleghany Corporation*, 75 F. (2d) 947 (C. C. A. 4th, 1935), cert. den. 296 U. S. 581.

decision reported in 113 F. (2d) 266 (R. 1372), Standard as a creditor is in a separate and deferred class, there is, therefore, a class of creditors which is affected by and has not accepted the plan. Standard is "affected" because, under the decision of the Circuit Court of Appeals reported in 113 F. (2d) 266, until consummation, an increase in the value of the Debtor's assets would entitle Standard to participate. The order confirming the Plan certainly "affects" Standard adversely, realistically and actually, because henceforth Standard will not be entitled to participate, come what may. Further, Standard as a common stockholder is "affected" in the same sense. The creditor and the common stockholder are now to be forever barred. It is the confirmation of the plan that bars them.

To say that Standard is not affected because it has no equity is, we submit, to beg the question. The act sets forth four methods of making adequate provision for a creditor, and three for a stockholder, none of which is here employed. We submit that these methods are exclusive methods to be employed, and that only through the employment of these methods can the requirements of the act and of due process be discharged.

The reorganization sections of the Bankruptcy Act by their terms constitute an equitable method of reorganizing interests in estates of debtors in financial difficulty. They are designed to avoid foreclosure of junior interests, particularly in the absence of a finding of insolvency. In setting up methods for the reorganization of Debtors, these objectives were undoubtedly in the legislative contemplation. Absent the consent expressly required by Section 179, subdivisions (7)(d) and (8)(c) of Section 216 provide for the use of such other method as will equitably

and fairly provide such protection. Even if Standard, as a creditor, be deferred to the notes and preferred stockholders, the plan must make equitable and fair provision for Standard's protection.

Sound legal and economic principles require that the rule of relative priorities be applied to the adjustment of the rights of several classes of stockholders of a corporation, where provision has been made for the full satisfaction of the prior rights of creditors. We agree that the rule expressed in *In re Consolidated Rock Products Company* and in *Case* v. *Los Angeles Lumber Products Co. Ltd.* is a sound rule, founded upon sound legal and economic principles; it is of the essence of the contractual and economic relationship between the stockholders and the creditors that the capital contributed by the former should be a cushion for the satisfaction of the claims of the latter.

We maintain, however, that in the adjustment of the relationships between classes of stockholders of a solvent company, where creditors have been fully provided for, there are powerful economic and social, as well as legal arguments in support of the application of the rule of relative priorities. On the basis of the contract of the parties (R. 1346 B), as we have pointed out, the preferred stock is not entitled to a priority over the common stock except in the distribution of earnings and except in the event of a distribution in liquidation. Absent express permissive provisions in the contract, the preferred stockholder is not entitled to foreclose junior classes of stock at any given time when the liquidation value of the assets of a company, while ample to satisfy the prior claims of creditors, is insufficient to satisfy the preferential rights in liquidation of the preferred stockholder. All stock capital must be

considered risk capital; in exchange for preferential rights stated in the contract, the preferred stockholder has expressly consented to a continuance of the enterprise until the common stockholders or creditors bring about a liquidation. The refusal of courts to compel a Board of Directors representing common stock interests to declare dividends on preferred stock, in the absence of circumstances akin to fraud or breach of trust, is but one example of the recognition by the courts of the fact that the relationships between the preferred stockholder and the common stockholder of a solvent company are governed by their contract.

If as a result of the application of a rule of absolute priorities to the relationships between the preferred and common stockholders of a solvent company, the common stock may be eliminated, investments in junior stock will inevitably be further discouraged. It has recently been pointed out, in the public press and in the reports of Congressional investigators, that the welfare of the country requires the encouragement of investments in equity securities of corporations rather than in debt securities. Public policy is against the application of a rule of foreclosure against junior interests in the circumstances of this case.

We submit, therefore, that sound principle, based on contractual agreement and public policy, requires the application of the rule of relative priorities in the adjustment of the relations of the equity interests in a solvent corporation.

POINT II

EQUITY REQUIRES THE REORGANIZATION COURT TO TAKE INTO CONSIDERATION IN THE DETERMINATION OF WHETHER THE PLAN IS FAIR AND EQUITABLE TO STANDARD (UNDER THE PARTICULAR CIRCUMSTANCES OF THIS CASE (1) THE ACTUAL PRICES PAID BY HOLDERS OF NOTES AND PREFERRED STOCK WHO ACQUIRED SUCH SECURITIES DURING THE PENDENCY OF THE REORGANIZATION PROCEEDINGS AT DISCOUNTS BELOW THEIR FACE VALUE, AND (2) THE EVIDENCE RECEIVED BY THE DISTRICT COURT SUBSEQUENT TO THE DECISION BY THIS COURT IN THE *TAYLOR* CASE.

The plan of reorganization which was confirmed excludes Standard (the receptacle of the investments of fifty-eight thousand security holders), with an investment of upwards of $20,000,000 in cash in the Debtor, from any participation in the highly speculative assets of a solvent Debtor in favor of holders of notes and preferred stock many of whom have acquired their securities during the receivership and reorganization proceedings at prices but a small fraction of the principal amount of such securities and who will inevitably gain a wind-fall no matter what provision may be made for Standard's protection. If priority over Standard is limited to the prices paid for securities after the inception of the reorganization proceedings (as low as 20¢ on the dollar for notes, inclusive of six or seven years of accrued interest, and as low as $1 a share for the preferred stock, inclusive of seven or eight years of accrued dividends of $7 per share per annum), and if relative priorities were preserved with respect to remain-

ing assets, the note holders and preferred stockholders could not reasonably claim to be unfairly treated if Standard is permitted to participate.

The experience of the District Court in obtaining data in response to the order of December 15, 1939 (R. 72, 133-137) shows conclusively that it was practicable in this case to require security holders to file the data required by Section 77B (e)(1).

The relevance of such data, in this case, is this: Because of the decision of this Court in the *Taylor* case, Standard has been moved down from its normal position as a creditor. The question is whether subordination should be converted into the penalty of exclusion. We say that fairness would preclude such a result and that it is relevant to the issue of fairness to see how much was paid for such of the securities by holders who claim the benefit of the exclusion as were acquired after the inception of the proceedings. Standard has not participated in the control of Deep Rock since the beginning of the proceedings; those who purchased securities since then have done so with full knowledge of Standard's claim and those who purchased prior to the decision by this Court in the *Taylor* case must have assumed that Standard was entitled to participate ratably with the notes and in priority to the preferred stock. We are not suggesting a limitation of the claims of the holders of such securities against the Debtor; we do say that the cost of such claims bears directly on the extent to which in fairness Standard should be subordinated to them.

It is a fair and reasonable inference that some, if not the greater number, of the holders of the 29.87% of outstanding notes and of the holders of the 37.25% of outstanding preferred stock who failed to report their pur-

chases of notes and preferred stock since March 1, 1933 (as directed by the District Court) purchased at or near the bottom of the prices reported during such period, *i.e.*, notes at 20% to 25% of the principal amount thereof "flat", and preferred stock at about $5 a share. (Compare Trustee's statement of the market prices for Deep Rock's notes and preferred stock during the receivership period, beginning March 1, 1933 (R. 134-137)).

We respectfully submit that equity requires that Standard receive a participation in the reorganized company and that this Court contemplated a participation in its decision in *Taylor* v. *Standard*. This Court stated in that case:

> "If a reorganization is effected the amount at which Standard's claim is allowed is not important if it is to be represented by stock in the new company, provided the stock to be awarded it is subordinated to that awarded to preferred stockholders. No plan ought to be approved which does not accord the preferred stockholders a right of participation in the equity in the Company's assets prior to that of Standard, and at least equal voice with Standard in the management. Anything less would be to remand them to precisely the status which has inflicted serious detriment on them in the past."

Law Review writers are generally in accord with our understanding of the *Taylor* decision.

34 Ill. Law Review 94 (1939);

25 Va. Law Review 849 (1939);

39 Col. Law Review 907, 927, 928 (1939).

We urge especially that the District Court and the Circuit Court of Appeals should have taken into consideration, in determining whether the plan excluding Standard from participation is fair and equitable, the evidence received by the District Court early in 1940 (after the decision in the *Taylor* case) which bears directly on the relationships between Standard and the Debtor prior to March 1, 1933 and on the benefits enjoyed by the public security holders of Deep Rock through cash payments made by Standard to them and to the Debtor. The decision of this Court in the *Taylor* case did not pass on the fairness of a plan of reorganization, at the time of the decision as yet unborn. The doctrine of *res adjudicata* is, therefore, not applicable to this case and the District Court and the Circuit Court of Appeals were not precluded from considering, on the issue of fairness of the plan, facts subsequently incorporated in the record, which, had they been before this Court in the *Taylor* case, would perhaps have brought about a different result in that case. (We refer here particularly to the testimony at pp. 1296-1307 and at pp. 1264-1271 and 1275-1276 of the Record.) Fairness of plan represents a new issue which was presented to the courts below and, petitioners submit, the courts below were obliged to consider the subsequent testimony. The District Court, in the light of this evidence (admitted over objection), did indeed state:

> "I agree with you it is inequitable to subordinate your claim to the full amount of these note holders, taking into consideration the actual consideration paid by speculators for their notes pending this bankruptcy proceeding",

but erroneously considered himself precluded by the decision of this Court in the *Taylor* case from giving any effect to the subsequent evidence, even on the subject of fairness of the plan (R. 1314, *seq.*). The Circuit Court apparently fell into similar error (R. 1690-1691).

We submit also that under the equitable doctrine expressed in *Southern Pacific Company* v. *Bogert* and *Thomas* v. *Brownville etc. R. Co., supra,* the second amended plan of reorganization is unfair and should not have been confirmed. We certainly do not subscribe to the belief of the District Court Judge that he was compelled by the decision of this Court in the *Taylor* case to confirm a plan he considered inequitable (R. 1309, 1314).

Finally, we wish to point out the tremendous margin of error in evaluating oil properties; the Circuit Court recognized the violent fluctuations in the value of oil properties such as this and the prospect of substantial increase in the value of Deep Rock's assets (R. 1377).

Bearing on the question of the fairness of forever excluding Standard, is the fact that the earnings of the Debtor during reorganization have been substantial; and the properties of the Debtor have been improved substantially during the receivership period, according to the undisputed testimony of Mr. Greis, the Trustee. For the five years 1935-1939, total adjusted earnings from operations amount to $10,064,292.20, making the average annual adjusted earnings from operations $2,013,858.44 (R. 1350 B). These earnings are subject to depletion and depreciation charges, estimated by the Trustee to average $1,230,136.13 annually, and to other charges, including interest on prereceivership debt and income taxes (R. 1350 B). The net earnings before interest and federal in-

come taxes, after all depletion and depreciation and all other charges, averaged $538,747.22 during each of the five years in question, reaching a high figure in 1936 of more than $1,000,000 (R. 1350 B). In view of the hypothetical assumption of a $1 price for oil in the future (R. 1210), (compared with a current price of $1.02) and in view of present world conditions, the speculative possibilities of a great increase in Deep Rock's earnings bear directly on the equity of forever excluding Standard and enriching "speculators" in Deep Rock's securities.

As long as Deep Rock's vast speculative resources remain unexploited, Standard should have a right of participation; the cut off date of Standard's interest as a creditor should not be the date of confirmation of a plan of reorganization under the circumstances of this case.

CONCLUSION

We submit that the decisions of the Circuit Court of Appeals and of the District Court are erroneous as a matter of law.

The adjudication of the Circuit Court of Appeals, based on a decision of this Court (in the *Taylor* case) resting on the principles of equity, brings about a result which the District Judge considered inequitable; it would be a sad travesty on the judicial process if injustice and inequity be done in the name of this Court's opinion, rendered in order to do equity. Furthermore, the questions raised by the petition include some of great public importance. They ought to be set at rest by this Court.

It is respectfully submitted that the petition to review the judgment of the Circuit Court of Appeals for the Tenth Circuit should be granted.

Dated: March 14, 1941.

Respectfully submitted,

A. Louis Flynn,
231 South La Salle Street,
Chicago, Illinois.

Jacob K. Javits,
165 Broadway,
New York, N. Y.

Wilbur J. Holleman,
National Bank of Tulsa Building,
Tulsa, Oklahoma.

Selig J. Levitan,
165 Broadway,
New York, N. Y.
Counsel for Petitioner.

EXHIBIT A

Section 216 (7) and (8) and Section 221 (1) and (2) f Chapter X of the Bankruptcy Act:

"Sec. 216—A plan of reorganization under this chapter—

"(7) Shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either, as provided in the plan or in the order confirming the plan,

"(a) By the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or

"(b) By a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or

"(c) By appraisal and payment in cash of the value of such claims; or

"(d) By such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

"(8) Shall provide for any class of stockholders which is affected by the plan and does not accept the plan by the majority of the stock required under this chapter, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan, either, as provided in the plan or in the order confirming the plan,

"(a) By the sale of such property at not less than a fair upset price; or

"(b) By appraisal and payment in cash of the value of their stock; or

"(c) By such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection; Provided, however, That such protection shall not be required if the judge shall determine that the debtor is insolvent;"

"Sec. 221.—The judge shall confirm a plan if satisfied that—

"(1) The provisions of article VII, section 199, and article X of this chapter have been complied with;

"(2) The plan is fair and equitable, and feasible;"